



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870 and 872

[Docket ID: OSM 2021-0008; S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520]

RIN 1029-AC83

Abandoned Mine Land Reclamation Fee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), and the Department of the Interior are adopting as final the interim final rule published on January 14, 2022, making amendments to the departmental regulations governing the Abandoned Mine Reclamation Fund (AML Fund) to be consistent with the Infrastructure Investment and Jobs Act (IIJA), which included the Abandoned Mine Land Reclamation Amendments of 2021 (the 2021 amendments). The final rule adopts the changes to the regulations reflecting the extension of our statutory authority to collect reclamation fees for an additional 13 years and the 20 percent reduction in fee rates. In addition, the final rule adopts the changes to the regulations reflecting the statutory extension of the dates when moneys derived from these fees will be available for distribution to eligible States and Tribes as grants. The final rule adopts the interim final rule with two revisions to correct grammatical errors. The final rule also corrects two additional grammatical errors in the regulations which were unaffected by the interim final rule.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Harry Payne, Office of Surface

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I. Background

A. How did the reclamation fee work before the 2021 amendments?

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the AML Fund, which is funded primarily by a reclamation fee (also known as the AML fee) assessed on each ton of coal produced in the United States and that, among other things, provides funding to eligible States and Tribes for the reclamation of coal mining sites abandoned or left in an inadequate reclamation status as of August 3, 1977. As originally enacted, section 402(a) of SMCRA set the reclamation fee at 35 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced by surface mining methods, 15 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever was less) for lignite. Section 402(b) of SMCRA first authorized collection of reclamation fees for 15 years following the date of SMCRA's enactment (August 3, 1977). Subsequently, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388, section 6003(a)) extended our fee collection authority through September 30, 1995, followed by the Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2776, 3056, section 19143(b)(1) of Title XIX), which extended our fee collection authority through September 30, 2004. A series of short interim extensions in appropriations and other acts further extended our fee collection authority through September 30, 2007.

The Surface Mining Control and Reclamation Act Amendments of 2006 (the 2006 amendments) were signed into law on December 20, 2006, as part of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432, 120 Stat. 2922). The 2006 amendments extended our fee collection authority under section 402(b) through September 30, 2021,

and reduced the reclamation fee rates in section 402(a) by 10 percent for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

Therefore, the fee rates from October 1, 2012, through September 30, 2021, required coal mine operators to pay 28 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced by surface mining methods, 12 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced from underground mines, and 8 cents per ton (or 2 percent of the value of the coal, whichever was less) for lignite. OSMRE notified operators in writing of the change in fee rates resulting from the 2006 amendments in January and September 2007. 73 FR 67576, 67578. On November 14, 2008, the Department promulgated final regulations at 30 CFR parts 870 and 872 to codify these changes and other revisions made by the 2006 amendments (73 FR 67576).

B. How did the 2021 amendments change the reclamation fee and the annual AML grant distributions?

The 2021 amendments, signed into law on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (Pub. L. 117-58, 135 Stat. 429), commonly known as the Bipartisan Infrastructure Law (BIL), extended our fee collection authority under section 402(b) through September 30, 2034, and reduced reclamation fee rates in section 402(a) by 20 percent from the prior rates. Therefore, for the calendar quarter beginning October 1, 2021, the current rates require operators to pay 22.4 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal other than lignite produced by surface mining methods, 9.6 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal other than lignite produced from underground mines, and 6.4 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite.

In addition, the 2021 amendments extended the current annual AML grant distributions to both uncertified and certified States and Tribes. (A State or Tribe

“certifies” under section 411(a) of SMCRA (30 U.S.C. 1240a) when it has completed all known coal AML priorities.) Specifically, the 2021 amendments revised section 401(f)(2) of SMCRA to extend the annual grant distributions from the AML Fund to eligible uncertified States and Tribes by 13 years. The extension of our fee collection authority in section 402(b) also effectively extended the AML grant distributions from general Treasury funds (i.e., certified in lieu funds) to certified States and Tribes by 13 years, as provided in sections 402(i)(2) and 411(h)(2) of SMCRA (30 U.S.C. 1232(i)(2) and 1240a(h)(2)).

While we consider the 2021 amendments to be self-executing, some of our regulations were inconsistent with these provisions. To provide consistency between our regulations and the 2021 amendments and to clarify that fee collections continue without interruption at the reduced rates and that annual AML grant distributions to eligible States and Tribes based on fee collections continue using the formula described in sections 401(f) and 402(i)(2) of SMCRA, we published an interim final rule, effective upon publication, that revised 30 CFR parts 870 and 872 to reflect the reduction in reclamation fee rates and the extension of our fee collection authority and annual AML grant distributions (87 FR 2341 (January 14, 2022)). We are finalizing that rule in this document.

II. Overview of the Interim Final Rule and Comments

A. Overview of the Interim Final Rule

The interim final rule revised the Department’s regulations to be consistent with the 2021 amendments, which extend our statutory authority to collect reclamation fees for an additional 13 years, reduce reclamation fee rates, and extend the dates when annual grant funding will be available to eligible States and Tribes. Similar to the proposed rule for the 2006 SMCRA amendments, the interim final rule retained certain expired fee rates at 30 CFR 870.13 for historical purposes and for use in future audits of production from

the years in which those rates applied. *See* 73 FR 35214, 35219 (June 20, 2008). The interim final rule also made a clarifying change to the introductory text of 30 CFR 872.27(a)(2) by removing reference to Federal fiscal years 2007 through 2022.

B. Discussion of Comments

Summary. OSMRE received two comments on the interim final rule, neither of which was specific to the rule language. One commenter recommended that “taxpayers not fund reclamation costs or fees” and suggested that other individuals benefiting from a mine should be responsible for reclamation. Another commenter similarly recommended that “no tax dollars be used to reclaim damages done by any private, or commercial enterprise on public lands” and suggested additional enforcement measures for tax crimes.

Response. Pursuant to SMCRA, all current coal mine operators are required to pay a reclamation fee on every ton of coal produced in the United States. These fees are deposited into the AML Fund and primarily used to provide grants to eligible States and Tribes for the reclamation of lands and waters that were mined for coal and abandoned or left in an inadequate reclamation status before August 3, 1977. These lands are characterized as “abandoned” because they were unreclaimed or inadequately reclaimed before the enactment of SMCRA, which was the first Federal law that required coal mine operators to restore lands and waters affected by mining practices. In addition, before States and Tribes can use AML moneys to reclaim a specific property, that State or Tribe must first make a determination that “there is no continuing reclamation responsibility [for that property] under State or other Federal laws.” Furthermore, if the property to be reclaimed is owned by someone who consented to, participated in, or exercised control over the mining operation that necessitated the reclamation, that property may be subject to a lien if there is a significant increase in the property value subsequent to reclamation. Thus, SMCRA ensures that no Federal funds will be used for reclamation of abandoned

mine lands unless there is no continuing reclamation responsibility for those lands under State or Federal laws, and, even if there is no continuing reclamation responsibility, a property owner who consented to, participated in, or exercised control over the mining operation that necessitated the reclamation may not profit from the federally funded reclamation project. The 2021 amendments did not alter these requirements and safeguards, they only extended our authority to collect reclamation fees, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions. Likewise, the interim final rule and this final rule simply revise the regulations to be consistent with the 2021 amendments and do not alter the requirement that the coal industry internalize the cost of AML reclamation.

III. Summary of the Final Rule

For the reasons discussed above and as provided in the interim final rule, OSMRE is adopting as final the interim final rule with two revisions to correct grammatical errors. Section 870.13(b) of the interim final rule incorrectly expressed the acronym for British Thermal Units as “Btu’s” rather than “Btus.” This rule corrects those grammatical errors in the regulations by replacing “Btu’s” with “Btus.” This rule also corrects two additional grammatical errors in 30 CFR 870.13(a) by replacing “Btu’s” with “Btus.”

IV. Procedural Matters

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that a final rule must be published in the *Federal Register* no less than 30 days before its effective date except for (1) substantive rules, which grant or recognize an exemption or relieve a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for

good cause. 5 U.S.C. 553(d). As described below, OSMRE finds good cause to publish this rule with an immediate effective date.

The APA's legislative history indicates that the purpose of the 30-day publication requirement is to "afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of the rules may prompt." S. REP. NO. 79-752, at 201 (1945). However, the final rule merely revises the regulations to be consistent with the requirements of the BIL, which President Biden signed into law on November 15, 2021; thus, coal mine operators have had more than six months to prepare for the extension of our fee collection authority and commensurate reduction in reclamation fee rates, well in excess of the traditional 30-day requirement. Furthermore, the BIL did not create any new requirements with which coal mine operators must comply; both the requirement that coal mine operators pay a reclamation fee and our authority to collect the fee have existed since August 3, 1977, when SMCRA was enacted. Consequently, any impact on coal mine operators from the extension of our fee collection authority or the reduction in fee rates should be minimal. Finally, it is in the public interest for the final rule to be effective immediately because it revises out-of-date regulations to conform with the changes made by the 2021 amendments. These changes provide clarity and avoid the confusion that might otherwise result from stale regulatory provisions that are inconsistent with current law. The concurrent extension of our fee collection authority and reduction in reclamation fee rates, if not clearly understood by coal mine operators, could result in delayed payment of reclamation fees, which could subject operators to late payment penalties and potentially affect annual AML grant distributions to States and Tribes (30 U.S.C. 1231(f) and 1232(i)(2)) or estimated interest payments to the United Mine Workers of America (UMWA) Health and Retirement Funds' health care plans (30 U.S.C. 1232(h)). Conversely, confusion over reclamation fee rates could also result in overpayments based on the previous, higher reclamation fee rate, which may require

OSMRE to process refunds and reduce administrative efficiency. For these reasons, we are availing ourselves of the good cause exemption at 5 U.S.C. 553(d)(3).

In addition, pursuant to 5 U.S.C. 553(b)(3)(B), an agency may waive the prior notice and public comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. We are availing ourselves of the good cause exemption at 5 U.S.C. 553(b)(3)(B) to correct two grammatical errors in 30 CFR 870.13(a) that were the result of an earlier rulemaking and unaffected by the interim final rule. This is a ministerial action that will have no substantive impact on regulated entities or the public. For that reason, we do not anticipate receiving meaningful comments on a proposal to correct these grammatical errors and find good cause to forgo notice and an opportunity for public comment.

B. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has determined that this rulemaking is not a major rulemaking, as defined by 5 U.S.C. 804(2), because this rulemaking has not resulted in, and is unlikely to result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As noted above, this rulemaking implements the 2021 amendments to SMCRA, which extended our fee collection authority for an additional 13 years, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions. Although OSMRE typically collects more than \$100 million in reclamation fees annually and distributes over \$100 million in annual AML grants to eligible States and Tribes, the

reduction in fee collections resulting from the 20 percent reduction in reclamation fee rates is anticipated to be less than \$100 million a year when compared to the fees collected and grants distributed in the fiscal years since fiscal year 2013, when the fee rate last changed. And because the 2021 amendments are self-executing, any effects come not from requirements imposed by this rule but rather from the extension of our traditional AML grant program and fee collection authority, and concurrent reduction in reclamation fee rates by Congress. As a result, this rule is not considered a major rulemaking.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that OIRA will review all significant rules before they are issued. Because this final rule merely reflects the 2021 amendments to SMCRA, which extended our fee collection authority for an additional 13 years, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions, OIRA has concluded that this rulemaking is not a significant regulatory action under Executive Order 12866. Pursuant to Executive Order 12866, an action is a “significant regulatory action” if it is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with planned or actual action taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues that are the result of legal mandates, the President’s priorities, or the principles set forth in the Executive order.

Although the reclamation fees collected and AML grants distributed typically exceed \$100 million annually, this final rule is implementing only the 2021 amendments’

continuation of an existing program mandated by Congress for an additional 13 years and is therefore not a change with a significant monetary impact. In addition, because the administrative and procedural provisions of this rule would reflect an annual impact of less than \$100 million, it is not significant under Executive Order 12866. Furthermore, as OSMRE has collected reclamation fees and distributed annual AML grants for more than four decades, the agency is not aware of any inconsistencies with other agency actions or novel legal or policy issues that could arise as a result of the reauthorization of the reclamation fee and the extension of AML grants.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), which requires an agency to prepare a regulatory flexibility analysis for all rules, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, applies only where an agency is required to publish a general notice of proposed rulemaking for any proposed rule. *See* 5 U.S.C. 601(2), 603(a), and 604(a). As OSMRE was not required to publish a notice of proposed rulemaking associated with the interim final rule or this final rule, the RFA does not apply.

E. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. As explained in section III.A. above, this rule:

- (a) will not have an annual effect on the economy of \$100 million or more;
- (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires that, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. *See* 2 U.S.C. 1532(a). However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. As OSMRE was not required to publish a notice of proposed rulemaking for the interim final rule or this final rule, the UMRA does not apply.

G. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

H. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have

sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

I. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

J. Consultation with Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy; Departmental Manual Part 512, Chapters 4 and 5; and Executive Order 13175 and have determined that it has no substantial direct effects on federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal consultation policy is not required. OSMRE has conducted informal listening sessions with eligible Tribes to provide an overview of the BIL as it relates to the AML program. OSMRE is committed to communication and coordination and will continue engagement strategies as needed to keep Tribes informed of the requirements of the program.

K. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA), OSMRE may not conduct or sponsor, and you are not required to respond to, a collection

of information unless it displays a currently valid OMB control number. OSMRE has reviewed this final rule and determined that it does not introduce any new or revised collections of information under the PRA. Therefore, no submission to OMB is required.

L. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of both an administrative and financial nature. *See* 43 CFR 46.210(i). In addition, any environmental effects resulting from this rulemaking as a whole are too broad, speculative, and conjectural because the nature of AML problems vary, occur in numerous locations throughout the country, and will be reclaimed at different times, and because each project completed with these funds is subject to NEPA review closer to the time that the project is undertaken. *Id.* We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

M. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)

This rule is not a significant energy action as defined in Executive Order 13211. A Statement of Energy Effects is not required.

N. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) be logically organized;
- (b) use the active voice to address readers directly;
- (c) use common, everyday words and clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

O. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

P. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 note *et seq.*) directs Federal agencies to use voluntary consensus standards when implementing regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This final rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA, and the requirements would not be applicable to this final rulemaking.

*Q. Protection of Children From Environmental Health Risks and Safety Risks
(Executive Order 13045)*

Executive Order 13045 requires that environmental and related rules separately evaluate the potential impact to children. However, Executive Order 13045 is inapplicable to this rulemaking because this is not a substantive rulemaking and a notice

of proposed rulemaking was neither required nor prepared. *See* section 2-202 and 5-501 of Executive Order 13045.

List of Subjects

30 CFR Part 870

Abandoned Mine Reclamation Fund, Fee collection and coal production reporting, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 872

Indians—land, Moneys available to eligible States and Indian tribes.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

Laura Daniel-Davis,
Principal Deputy Assistant Secretary,
Land and Minerals Management.

For the reasons given in the preamble, the Department of the Interior adopts the interim rule amending 30 CFR parts 870 and 872, which was published at 87 FR 2341 on January 14, 2022, as final with the following changes:

PART 870 – ABANDONED MINE RECLAMATION FUND - FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation at part 870 is revised to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105-277, 112 Stat. 2681.

2. Amend § 870.13 by revising paragraph (a)(4) and (5) and (b)(4) and (5) to read as follows:

§ 870.13 Fee rates.

(a) ***

Type of fee	Type of coal	Amount of fee
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* * * * *		
(4) In situ coal mining fee	All types other than lignite	12 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	8 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(b) * * *

Type of fee	Type of coal	Amount of fee
* * * * *		
(4) In situ coal mining fee	All types other than lignite	9.6 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	6.4 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

